

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/05/2011 has been entered.

Applicant response has been received and its contents have been carefully considered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 10-12, limitation "the carrying mode of multi-chamber container is a mode folded in two", it is not clear whether multi-chamber container as claimed is folded in two or not. This ambiguity makes claim indefinite. Claims 11 and 12 depends on claim 1.

Claim Rejections - 35 USC § 103

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 2001/0030134 to Goglio et al., in view of US 5423421 to Inoue et al..

As to claim 1, Goglio discloses a multi-chamber container [fig 1] that accommodates a plurality of agents, comprising:
the inner container body [1 or 10] formed by at least one flexible sheet of material, wherein the inner container body includes including a plurality of filling chambers [5 and 6, or 11 and 12] to fill agents;
a communication portion [between 3 and 4 or 15] that is provided in at least one of the filling chambers to cause the filling chambers to be in communication with one another; and an opening preventing portion [3 and 4 or seal 15] that closes the communication portion in a carrying mode of the multi-chamber container [fig 2 or fig 6], wherein the carrying mode of the multi-chamber container is a mode folded in two, and wherein the opening preventing portion is a seal positioned between the filling chambers [fig 2 or fig 6] and the seal adapted to peels off by expanding [para 007 or para 0027] the folded multi-chamber container to a use mode of the multi-chamber container.

Goglio discloses the claimed invention as discussed above with the exception of the following claimed limitation that is taught by Inoue.

Inoue teaches an outer container body [50] formed by at least one flexible sheet of material, the outer container body comprising a cavity [fig 11]; an inner container body [fig 11, column 9:45-51] disposed in the cavity of the outer body therein, wherein

the carrying mode of the multi-chamber container is a mode folded in two [fig 11, column 9:45-51].

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide multi-chamber inner container of Goglio folded in two with an outer container as taught by Inoue, to prevent inadvertent opening of the multi-chamber container [Inoue, column 9:45-51]. *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396. MPEP 2143 (A). Furthermore,

It is noted that the claims are directed to apparatus which must be distinguished from the prior art in term of structure rather than function. Hence, the functional limitations "wherein the carrying mode of the multi-chamber container is a mode folded in two"; "adapted to peels off by expanding the folded multi-chamber container to a use mode of the multi-chamber container"; "an opening preventing portion that closes the communication portion in a carrying mode of the multi-chamber container" which are narrative in form have been given little patentable weight. In order to be given patentable weight, a functional recitation must be supported by the recitation in the claim of a sufficient structure to warrant the presence of the functional language.

In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP 2114. Furthermore, Product-by-Process recitations that, "'wherein the carrying mode of the multi-chamber container is a mode folded in two'; 'adapted to peels off by expanding the folded multi-chamber container to a use mode of the multi-chamber container'" have been given little patentable weight. In accordance to MPEP 2113, the method of forming or opening the device is not germane to the issue of

patentability of the device itself. Please note that even though product-by-Process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e. multi-chamber container with seal in therebetween, does not depend on its method of opening or carrying, i.e. peels off by expanding. *In re Thorpe*, 227 USPQ 964, 966 (Federal Circuit 1985). MPEP 2113.

5. Claims 11 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Goglio-Inoue as applied to claim 1 above, and further in view of US PG PUB 2004/0188281 to Iwasa et al..

As to claim 11, Goglio-Inoue discloses the claimed invention except a caution member to check opening between the filling chambers. Iwasa teaches a caution member [352, fig 12]. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Goglio-Inoue's multi-chamber container with caution member as taught by Iwasa to caution about / provide important information to the customer. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine one known element in this case Goglio-Inoue's multi-chamber container, with another, in this case Iwasa's caution member, to obtain the predictable results of cautioning about / provide important information to the customer. *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396. MPEP 2143 (A).

As to claim 12, Goglio-Inoue modified in view of Iwasa discloses the caution member is attached to near the communication portion [3, fig 12], so that the caution member drops by expanding [when one chamber of the container is squeezed it will

expand the sealed area between the two chambers of the closed container, column 11:20-54] the folded multi-chamber container in the use mode of the multi-chamber container. It is noted that the claims are directed to apparatus which must be distinguished from the prior art in term of structure rather than function. Hence, the functional limitations "so that the caution member drops by expanding the folded multi-chamber container in the use mode of the multi-chamber container" which are narrative in form have been given little patentable weight. In order to be given patentable weight, a functional recitation must be supported by the recitation in the claim of a sufficient structure to warrant the presence of the functional language. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP 2114.

Furthermore, Product-by-Process recitations that, "drops by expanding" have been given little patentable weight. In accordance to MPEP 2113, the method of forming or opening the device is not germane to the issue of patentability of the device itself. It is noted that even though product-by-Process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e. multi-chamber container with seal in therebetween, does not depend on its method of using, i.e. drops by expanding. *In re Thorpe*, 227 USPQ 964, 966 (Federal Circuit 1985). MPEP 2113.

Response to Arguments

6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. **Prior Art not relied upon:** See attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAUSHIKKUMAR DESAI whose telephone number is (571)270-7290. The examiner can normally be reached on Monday- Friday 7:00 AM - 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Pickett can be reached on 571-272-4560. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. D./
Examiner, Art Unit 3788
Friday, August 19, 2011.

/J. Gregory Pickett/
Supervisory Patent Examiner, Art Unit 3788